

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RECLAIM THE RECORDS and BROOKE
SCHREIER GANZ,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS, including its
Components, the Office of General Counsel,
the Veterans Benefits Administration,
and the Veterans Health Administration,

Defendant.

18 Civ. 8449 (PAE)

**DECLARATION OF JOHN F.
QUINN III**

I, John F. Quinn III, do hereby declare under penalties of perjury, pursuant to 28 U.S.C. §1746, that the following is true and correct to the best of my knowledge, information and belief:

1. I am the Supervisory Program and Management Analyst, National Data Systems (“NDS”), Austin, Texas. NDS is a division of the Veterans Health Administration (“VHA”) Office of Health Informatics of the Department of Veterans Affairs (“VA”). I was appointed to this position in August 2001. In May 2018, I was reassigned to the VA Office of Electronic Health Record Modernization, Data Migration and Management team, Austin, Texas. Although still temporarily assigned as of May 2019, I continued to represent NDS for all issues related to the original Ancestry.Com FOIA request, discussed in further detail below, and the current FOIA request from Reclaim the Records and Brooke Shreier Ganz at issue in this litigation. I base this declaration on my personal knowledge and best recollections, as well as information made known to me by other NDS staff who participated in the analyses described below.

2. My Supervisory Program and Management Analyst responsibilities include, among other things, managing the processes for VHA staff to gain access to VHA health and administrative data, overseeing searches for VHA records in response to requests for VHA statistics and records from the VA Office of the Inspector General, United States Congress, General Accountability Office, other federal agencies, state governments, as well as FOIA requests. In addition, I actively participate and help lead data management activities for VHA data, including VHA's participation in the VA Open Data program.

3. In the following paragraphs, I will explain both the VHA data source used to respond to the Ancestry.com FOIA request and the incorrect death information associated with a small percentage of the records in the Ancestry.com FOIA data release. I will describe the process VHA and VBA used to identify the incorrect data followed by the steps VHA implemented to protect Veterans' identities through credit monitoring. I will then explain a compiled VHA data source used for analytical and research purposes to determine the living or deceased status of Veterans along with known limitations of the data, and why that is key for VHA's inability to verify all records requested by the Reclaim the Records FOIA request.

4. VA first received a FOIA request from Ancestry.Com in approximately January 2010 for records of deceased veterans contained in the VBA Beneficiary Identification and Records Locator Subsystem ("BIRLS"). Each month VBA provides VHA, through the VA Office of Information and Technology ("OIT"), a subset of BIRLS data for all those Veterans who have a death date, and VHA named this file the "BIRLS Death File." VHA is the data steward for the BIRLS Death File and establishes the business rules that VA OIT implements to build the BIRLS Death File. Through previous analysis of Veteran death information, VHA required that OIT completely rebuild the BIRLS Death File each year to eliminate incorrect

death dates that were later corrected by VBA staff in BIRLS. Without an annual refresh, new records would be added to the data set without correcting any existing records entered in error. However, while VHA is the data steward for the BIRLS Death File, VBA is the custodian of the BIRLS data underlying the BIRLS Death File.

5. VHA accepted the task of processing the Ancestry.com FOIA request in approximately June 2010. VHA's BIRLS Death File was accessible by a skilled VHA NDS data analyst and could be quickly transformed into a portable data format requested by Ancestry.com. Because the BIRLS Death File did not contain health information protected by the Health Insurance and Accountability Act of 1996, and all the Veterans contained in the file were understood to be deceased, the VHA FOIA Office determined that VHA could release the Veterans' full name, social security number, date of birth, date of death, gender, cause of death, and up to three military branch assignments including start and separation date. Prior to the release, VHA did not compare the BIRLS Death File against other data sources to validate the accuracy of the data. VHA believed that annual updates of the data were implemented and that source system for the data was generally accurate, including as to death status.

6. NDS provided the properly formatted copy of the BIRLS Death File to the VHA FOIA Officer at the end of September 2010. The VHA FOIA Officer released the responsive records in approximately March 2011 to Ancestry.com. Later in 2011, after Ancestry.com posted the Veteran death information on its website, Ancestry.com provided Veterans with a promotional discount membership to search family history on its website in anticipation of Pearl Harbor Day.

7. In mid-December 2011, VA became aware that some Veterans whose data was contained within the FOIA release and posted on Ancestry.com's website were incorrectly

identified with a death date, and the Veterans were actually alive. VBA attempted to identify those Veterans still alive by matching the BIRLS Death File released to Ancestry.com against other VBA data sources. The VA Office of Enterprise Integration used data sources on VA contract to identify additional living Veterans. After several weeks of data analysis, VA determined that 5,223 Veterans were incorrectly identified with a death date from the 14.4 million Veteran death records VA released to Ancestry.com. The 5,223 records represented 0.04 percent of the records contained in the BIRLS Death File released to Ancestry.com.

8. Once VA identified these 5,223 Veterans to Ancestry.com, Ancestry.com immediately removed Veteran incorrect death information from Ancestry.com's website. By January 2012, VA notified an initial group of Veterans through U.S. mail of the fact that VA released data through a FOIA request, the data elements (name, address, social security number, etc.) contained in the released data, and that VA had erroneously identified the Veterans as deceased in the data file. VA also provided one year of credit monitoring and required each Veteran to self-enroll in the credit monitoring program. By March 2012, VA had mailed to 3,641 Veterans a notification and credit monitoring letter. In addition, 201 families received next-of-kin notices as VA determined that 201 Veterans had died since Ancestry.com had initially posted the FOIA released BIRLS Death File. For the remaining 1,381 Veterans incorrectly identified with a death date, VA was unable to locate a mailing address, and therefore these Veterans were not notified. For all 5,223 Veterans incorrectly identified with a death date on the FOIA released BIRLS Death File, VBA placed a copy of the notification and crediting monitoring letter into the Veterans electronic claim file.

9. After VA provided credit monitoring notifications to Veterans, VBA and VHA entered into a memorandum of understanding establishing data ownership and use of data owned

by VBA and used by VHA. Pursuant to that agreement, VHA no longer releases data in response to FOIA requests that belongs to VBA, including data from BIRLS.

10. For research and analytical purposes, VHA builds a data file known as the Master Vital Status File to identify veteran death dates collated from multiple data sources as well as provide statistics about living Veterans such as the last health care provided by VHA. For a Veteran to be included in the Master Veteran Status File, the veteran either applied for health care eligibility or received health care from VA. Four times a year, VHA compares this list of Veterans against the Social Security Death Master File, death information recorded by the Centers for Medicare and Medicaid Services, the BIRLS Death File, the VA Master Veteran Index, and VHA's patient admission/discharge system that records a patient's discharge including discharge by death. Using information drawn from all these sources, VHA Master Vital Status File provides the VA with a repository of data for the subset of veterans described above.

11. On December 7, 2018, I attended a conference call with VA Office of General Counsel and VBA staff to discuss the Reclaim the Records FOIA request for the data file released to Ancestry.com. I understood that while Reclaim the Records, through its principal, Brooke Ganz, originally sought the FOIA release to Ancestry.com, Reclaim the Records later purported to expand the FOIA request to include additional death information recorded by VBA since 2010. Because NDS has skilled data analysts and is responsible for the VHA Master Vital Status File described above, NDS agreed to assist VBA with analyzing the BIRLS Death File in response to the Reclaim the Records FOIA Request. Both VBA and VHA determined that it was necessary to re-analyze the Ancestry.com release, in part because the analysis done in mid-December 2011 to identify any living veterans was done in an effort to cure the release of

personal information for living veterans as expeditiously as possible but also because the BIRLS data underlying the BIRLS Death File is constantly updated, and thus the results of the analysis could have changed since 2011.

12. VHA has a subset of the U.S. Centers for Disease Control and Prevention (CDC) Death Index. I contacted the VHA data steward of the data, and we jointly determined that NDS, by policy, could not use the CDC's Death Index for matching data for a FOIA release. The CDC receives much of its data from the U.S. States and its data sharing agreement with the States greatly restricts the use of the Death Index data. As we could not use the CDC Death Index, NDS then proceeded to use its Master Vital Status File for analysis.

13. On December 12, 2018, NDS restored its copy of the original FOIA released file that had been sent to Ancestry.com. The data file contained records for 14,470,254 individuals. NDS compared the 14.4 million records with the December 2018 VHA Vital Status Master File to identify which of the 14.4 million individuals also had information in the VHA Vital Status File. NDS did this by, in essence, comparing the social security number for each of the 14.4 million individuals to the social security numbers in the VHA Vital Status File to determine any matches. Nearly 78 percent of the individuals in the Ancestry.com release were not found in the December 2018 Vital Status Master File. This was an expected result given that VBA provides benefits to more Veterans than the number of Veterans to whom VHA provides Veteran health care. As explained above, the VHA Vital Status File only includes information about Veterans enrolled for health care or receiving health care.

14. NDS also compared the 14.4 million records with the December 2018 version of the BIRLS Death File. There were approximately 18,000 Veterans on the Ancestry.com FOIA released data set that were no longer found on the December 2018 BIRLS Death File, and NDS

was unable to determine why 18,000 Veteran records were no longer found on the December 2018 BIRLS Death File.

15. Ultimately, NDS was able to locate information on 3,212,684 Veterans from the Ancestry.com FOIA release in the December 2018 VHA Master Vital Status File. Of those 3.2 million individuals, roughly 4,200 Veterans were identified by NDS with an indicator that they were alive in the VHA Master Vital Status File. This confirmed that there are still Veterans whose data was part of the Ancestry.com FOIA data release who are, as of December 2018, alive. NDS also found that 36 of the individuals matched had both a living indicator and a death indicator in the VHA Master Vital Status File. Finally, NDS found that approximately 427,300 individuals were indicated to be dead in the VHA Master Vital Status File, but had more than one unique date of death. Moreover, even when specifically analyzing individuals who were in the Master Vital Status File with only one date of death, VHA had significant concerns about the accuracy of the death information in the BIRLS Death File and concerns about the validity of any comparative verification process that could be done against sources like the Master Vital Status File, which is limited in scope and in turn relies on data sources that may themselves contain inaccuracies. VHA provided portions of the VHA Master Vital Status data for the matched individuals, including all available death dates, to VBA so that VBA could conduct its own analysis, and in doing so conveyed those concerns to VBA as well.

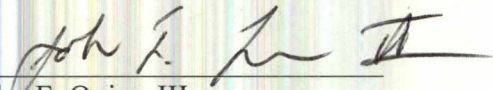
16. On April 8, 2019, VBA provided to NDS BIRLS data for 3,244,841 Veterans with death dates that post-dated the Ancestry.com release. NDS found very poor data quality. For instance, NDS found that 36.6 percent of the date of births listed were after the current date which was April 4, 2019 at the time of analysis. NDS also found that the difference between the date of death and date of birth was less than 16 years for 41% of the Veterans in the post-

Ancestry.com BIRLS data, including some Veterans whose birth dates were listed as later than their death dates. Altogether, about 45 percent of the post-Ancestry.com BIRLS data provided by VBA had some sort of error apparent from the face of the data, including the errors described above.

17. After identifying these data errors and coding the post-Ancestry.com BIRLS data to note those records that had such errors, NDS made efforts to match the individuals in the BIRLS data with the VHA Master Vital Status File using their social security numbers. Approximately 965,000 of those individuals were not matched to information in the VHA Master Vital Status File. Of the remainder, 22,483 Veterans were identified by NDS with an indicator that they were alive in the VHA Master Vital Status File. NDS also found that 207 of the individuals matched had both a living indicator and a death indicator in the VHA Master Vital Status File. Finally, NDS found that approximately 132,323 individuals were indicated to be dead in the VHA Master Vital Status File, but had multiple unique death dates.

18. VHA provided its analysis to VBA on April 15, 2019. Based on the significant number of obvious errors in the data, as well as the concerns that VHA had about attempting to verify the BIRLS Data through other data sources, as discussed further above, VHA recommended to VBA that the data should not be released.

Executed this 25 day of June 2019


John F. Quinn III
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